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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

WESTERN PET WHOLESALERS, INC.,

Plaintiff and Appellant,

v.

NATURA PET PRODUCTS, INC.,

Defendant and Respondent.

D047616

(Super. Ct. No. GIN037154)

APPEAL from a judgment of the Superior Court of San Diego County,  
Jacqueline M. Stern, Judge. Affirmed.

A judgment creditor may bring a fraudulent conveyance action against a third party where the third party allegedly received property from a judgment debtor without consideration. A judgment creditor has standing to bring such an action even where the judgment debtor has filed a petition for bankruptcy, so long as the bankruptcy trustee has not asserted any interest in the property received by the third party. However, such an action will not lie where the judgment debtor had no right to the alleged property.

Here the plaintiff judgment creditor brought an action against a pet food manufacturer, alleging the manufacturer received valuable distribution rights from the judgment debtor without consideration. Contrary to the finding of the trial court, the fact the judgment debtor had previously filed a petition for bankruptcy did not deprive the judgment creditor of standing to pursue its fraudulent conveyance action. The bankruptcy trustee had effectively abandoned the distribution rights. However, the record is undisputed that at the time the manufacturer allegedly received the distribution rights, the judgment debtor no longer had any right to them.

Accordingly, we affirm the judgment.

## SUMMARY

### A. *Western Pet v. Natura I*

The circumstances which give rise to this action were set forth at length in our unpublished opinion in *Western Pet Wholesalers, Inc. v. Natura Pet Products, Inc.*, D042817, August 11, 2005 (*Western Pet v. Natura I*). Briefly, in 1996 plaintiff Western Pet Wholesalers, Inc. (Western Pet), began distributing pet food and products manufactured by defendant Natura Pet Products, Inc. (Natura), in Southern California. Eventually, Western Pet became the second most productive distributor of Natura's products. In 1999 Natura gave Western Pet a 30-month exclusive Southern California distribution contract, with an option for another 30 months and a right of first refusal in the event Natura offered the Southern California distributorship to anyone else.

Natura was not happy with its relationship with Western Pet and before the initial 30-month period had expired Natura terminated the agreement and awarded the Southern

California distribution rights to Quality Pet Products-CA, Inc. (Quality), a corporation established by one of its employees, James Balsimo. Natura gave Quality a written one-year exclusive contract which would expire on December 31, 2002.

In response to termination of its distribution contract, Western Pet sued Natura, Quality and Balsimo. In May 2003 a verdict in favor of Western Pet was entered in its action against Natura, Quality and Balsimo. As against Quality the verdict awarded Western Pet \$611,918; as against Balsimo the verdict awarded Western Pet \$596,718. As against Natura the verdict awarded Western Pet \$1.3 million.

The day after the verdict was entered Natura stopped supplying Quality with its products. According to Balsimo's son, who was Quality's president, Quality did not believe it could remain in business after the verdict and he advised Natura that Natura would need to find another Southern California distributor for its products. As of May 2003 Quality's written exclusive contract had expired and Quality's president believed the parties were free to terminate their relationship. Natura did find another distributor for its products in May 2003 and entered into a written exclusive distribution agreement with the new supplier in July 2004.

*B. This Proceeding and Quality's Bankruptcy*

Natura, Quality and Balsimo appealed from the judgment entered on the verdict in *Western Pet v. Natura I*. Western Pet filed a cross-appeal. On May 7, 2004, while the appeal from the judgment against Quality and Natura was pending, Western Pet filed the complaint in this proceeding. Western Pet alleged that following entry of the jury verdict, Quality had in effect given Natura its distribution rights without consideration.

Western Pet alleged that Natura, Quality and Quality's shareholders were liable to it on theories of fraudulent conveyance, constructive trust and for equitable liens.

On July 15, 2004, Quality filed a petition for bankruptcy under chapter 7 of the Bankruptcy Act. On September 15, 2004, the bankruptcy trustee filed a no-asset report and on September 23, 2004, the bankruptcy case was closed.

After Quality's bankruptcy case was closed, Western Pet moved to dismiss Quality's appeal on the grounds that only the bankruptcy trustee had standing to pursue Quality's appeal. In response to the motion this court ordered that Quality obtain from the bankruptcy trustee a formal abandonment of his right to prosecute the appeal. Thereafter, Western Pet and Quality stipulated to dismissal of Quality's appeal.

Natura answered the complaint in this action and moved for summary judgment. Natura argued that in light of Quality's bankruptcy, Western Pet did not have standing to pursue any claim based on the transfer of Quality's assets. In the alternative Natura argued that at the time Quality allegedly transferred the distribution rights, Natura had the right to terminate Quality's distribution rights and hence those rights had no value. The trial court granted Natura's motion. It found that only the bankruptcy trustee had standing to pursue claims to the distribution rights; the trial court did not reach Natura's contention that the distribution rights had no value.<sup>1</sup>

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<sup>1</sup> In our opinion in *Western Pet v. Natura I* we affirmed the verdict insofar as it found Natura was liable to Western Pet but remanded for a new determination of damages. We also found the trial court had erred in dismissing Western Pet's cause of action alleging a violation of the Cartwright Act (Bus. & Prof. Code, §§ 16720, 16726).

## DISCUSSION

### I

Summary judgment may be granted only when a moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) In *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826 (*Aguilar*) the Supreme Court clarified the law courts must apply in California in ruling on motions for summary judgment.

Where the motion is brought by a defendant, the defendant will bear the burden of persuasion that "'one or more elements of the 'cause of action' in question 'cannot be established,' or that 'there is a complete defense' thereto." (*Aguilar, supra*, 25 Cal.4th at p. 850, citing Code Civ. Proc., § 437c, subd. (o)(2).) In *Aguilar* the Supreme Court established that summary judgment law in California does not require a defendant conclusively negate an element of the plaintiff's cause of action. Rather, in accordance with federal law, "All that the defendant need do is to 'show[] that one or more elements of the cause of action . . . cannot be established' by the plaintiff. [Citation.] In other words, all that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action -- for example, that the plaintiff cannot prove element X. Although he remains free to do so, the defendant need not himself conclusively negate any such element -- for example, himself prove *not* X." (*Aguilar, supra*, 25 Cal.4th at pp. 853-854, fns. omitted.)

In broadly outlining the law of summary judgment, the Supreme Court stated: "If a party moving for summary judgment in any action . . . would prevail at trial without submission of any issue of material fact to a trier of fact for determination, then he should

prevail on summary judgment. In such a case . . . the 'court should grant' the motion 'and avoid a . . . trial' rendered 'useless' by nonsuit or directed verdict or similar device." (*Aguilar, supra*, 25 Cal.4th at p. 855.)

Importantly, we review orders granting summary judgment de novo. (*Alexander v. Codemasters Group Limited* (2002) 104 Cal.App.4th 129, 139.) "This means ' "we are not bound by the trial court's stated reasons or rationales." ' [Citation.] In other words, '[t]he trial court's stated reasons for granting summary judgment are not binding on us because we review its ruling, not its rationale.' [Citation.] Indeed, in our review, 'we are not concerned with the findings actually made by the trial court in support of its ruling.' [Citation.]" (*Zimmerman, Rosenfeld, Gersh & Leeds v. Larson* (2005) 131 Cal.App.4th 1466, 1485.)

## II

The trial court erred in finding Western Pet did not have standing to pursue fraudulent conveyance and related claims to Quality's distribution rights. (See *Brenelli Amedeo, S.P.A. v. Bakara Furniture, Inc.* (1994) 29 Cal.App.4th 1828, 1842-1844 (*Brenelli*).)

In *Brenelli* a plaintiff recovered a judgment against a corporation. Thereafter, the corporate judgment debtor filed a chapter 7 bankruptcy petition. Shortly after the bankruptcy petition was filed, the bankruptcy trustee filed a "no asset" report and the bankruptcy court closed the bankruptcy case. The plaintiff then brought claims against the corporation's shareholders, alleging fraudulent conveyance, conspiracy to fraudulently convey and an accounting. The trial court sustained the defendants'

demurrers without leave to amend. As here, the defendants had argued that only the bankruptcy trustee could bring a fraudulent conveyance action on behalf of the corporation. The Court of Appeal reversed.

In rejecting the defendant's bankruptcy arguments, the court stated: "A no-asset report is tantamount to an abandonment of the trustee's interest in the property.' [Citation.] 'The general rule in this area is well settled—once a trustee abandons property, the abandonment is irrevocable.' [Citations.] If property has been abandoned, title to the property reverts back to the debtor as if it had never been held by the trustee. [Citation.] 'Thus, the trustee is divested of control of the property because the property is no longer part of the bankruptcy estate.' [Citation.]

"Under these rules, once the trustee filed his no-asset report and the bankruptcy court closed the case, the trustee was divested of any interest in, and of title to, any claim the estate may have had for fraudulent conveyance. In these circumstances, any protection from the automatic stay from prepetition claims against the debtor or its property is terminated once property is no longer property of the bankruptcy estate and the case is closed. Title 11 United States Code section 362(c) provides in pertinent part:

" '(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and

" '(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

" '(A) the time the case is closed; . . . '

"Thus, by abandoning any potential assets of the debtor and the closing of the bankruptcy case, appellant is not precluded by the automatic stay from pursuing an action against persons who are nondebtors and against property which, if it ever was scheduled as property of the estate, is no longer property of the estate. (See, e.g., *In re Torrez* (Bankr.E.D.Cal. 1991) 132 Bankr. 924 [no violation against automatic stay provision to foreclose on property not listed as an asset on bankruptcy schedules and held by nondebtors].)" (*Brenelli, supra*, 29 Cal.App.4th at pp. 1842-1843.)

Under the holding of *Brenelli*, Western Pet had standing to pursue its claims to the distribution rights Western Pet believed Quality unlawfully transferred to Natura. In particular, as in *Brenelli*, the Quality trustee filed a no-asset report which met the abandonment requirements of 11 United States Code section 554(a). (See *Brenelli, supra*, 29 Cal.App.4th at pp. 1842-1843.) Contrary to Natura's argument, the fact that the distribution rights were not scheduled as assets of the estate did not prevent the no-asset report from effectively abandoning those rights under the provisions of 11 United States Code section 554(a). (*Ibid.*) Admittedly, where a trustee has not filed a "no-asset" report, the alternative abandonment provisions of 11 United States Code section 554(c) are available only with respect to scheduled assets. (See *Vreugdenhill v. Navistar Intern. Transp. Corp.* (1991) 950 F.2d 524, 525-526.) Here, however, a no-asset report was filed and Western Pet could rely on the abandonment provisions of 11 United States Code



section 554(a).<sup>2</sup> Thus Western Pet had standing to pursue its claims to the alleged distribution rights.

## II

Although Western Pet had standing to bring its claims against Natura, on the merits its claims fail. We reach the merits of Western Pet's claims because we review the trial court's ruling dismissing Western Pet's complaint, not the court's reasoning. (See *Zimmerman, Rosenfeld, Gersh & Leeds v. Larson, supra*, 131 Cal.App.4th at pp. 1466, 1485.)

As Natura points out, Western Pet has no greater claim to the distribution rights than would Quality itself. (*Garcia v. Merlo* (1960) 177 Cal.App.2d 434, 439; see also *DiMaria v. Bank of California* (1965) 237 Cal.App.2d 254, 257.) "A creditor's suit will not lie to reach assets for which the judgment debtor himself . . . could not recover . . . in his own name." (*Garcia v. Merlo, supra*, 177 Cal.App.2d at p. 439.)

Natura would have a complete defense, as a matter of law, to any action brought by Quality with respect to the Southern California distribution rights. There is no dispute in the record that in May 2003, when the alleged distribution rights were transferred, Quality's previous distribution agreement had expired and no new agreement had been reached. Thus Quality's distribution rights were governed by Commercial Code section

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<sup>2</sup> We note that in *Western Pet v. Natura I* we required Quality obtain the permission of the trustee before prosecuting its appeal. In doing so we did not have occasion to consider whether, as in *Brenelli*, the trustee's no-asset declaration met the requirements of 11 United States Code section 554(a).

2309, subdivision (2), which provides: "Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed *may be terminated at any time by either party.*" (Italics added; see also *Consolidated Theatres, Inc. v. Theatrical Stage Employees* (1968) 69 Cal.2d 713, 727-728; *Varni Bros. Corp. v. Wine World, Inc.* (1995) 35 Cal.App.4th 880, 890-891.)

In addition to the provisions of Commercial Code section 2309, subdivision (2), "it is well established by case law that where the nature of the contract and the totality of the circumstances give no suggestion as to any ascertainable term, the term of duration shall be at least a reasonable time and *the contract shall be terminable at will upon reasonable notice.* [Citation.] *This rule applies, in particular, to distributorship agreements.* [Citation.]" (*Varni Bros. Corp. v. Wine World, Inc., supra*, 35 Cal.App.4th at pp. 890-892.) In *Varni Bros. Corp. v. Wine World, Inc.*, the defendant stopped using the plaintiff as a distributor of its wines. At the time the distribution arrangement was terminated there was no written agreement between the parties. In affirming a summary judgment in favor of the defendant, the court found there was no evidence of any understanding between the parties which would have limited the right to terminate the agreement on reasonable notice.

As in *Varni Bros. Corp. v. Wine World, Inc.*, here there is no evidence in the record that at the time Natura stopped distributing products to Quality there was any understanding or agreement which would have prevented Natura from terminating the distribution agreement. Given these circumstances, Natura was not required to provide Quality with any compensation for the distribution rights. (35 Cal.App.4th at pp. 890-

892.) Accordingly, Natura's failure to provide such compensation did not make it liable to any of Quality's creditors. (See *Garcia v. Merlo*, *supra*, 177 Cal.App.2d at p. 439.)

Judgment affirmed. Respondent to recover its costs.

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BENKE, J.

WE CONCUR:

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McCONNELL, P. J.

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HALLER, J.